

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN

&

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

THURSDAY, THE 22ND MARCH 2007 / 1ST CHAITHRA 1929

RCRev..No. 81 of 2007()

**RCA.151/2003 of ADDL.DISTRICT COURT (ADHOC)-II, THALASSERY
RCP.42/2001 of RENT CONTROL(MUNSIFF) COURT, PAYYANNUR
(IA.541 & 542/2003)**
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REVISION PETITIONER/APPELLANT/PETITIONER/RESPONDENT:

**KIZHAKKEPURAYIL AHAMMAD, S/O.MOOSA,
AGED 42 YEARS, SIRAJ MANZIL, UDUMUMTHALA,
SOUTH THIRKKARIPUR, KASARAGOD, REP. BY POWER OF
ATTORNEY HOLDER N.ISMAIL, S/O.IBRAHIM, AGED 30 YRS
UDUMUMTHALA,SOUTH THIRKKARIPUR, KASARAGOD.**

**BY ADV. SRI.T.A.RAMADASAN
SRI.CIBI THOMAS**

RESPONDENTS: RESPONDENTS/RESPONDENTS/PETITIONERS

**1. KRISHNA JANAKI, W/O.KAPPANA
MURALLEDHARAN, AGED 67 YEARS, FLAT-7,
CHINDEVALAPPU, RAMMOHAN ROAD,
KOZHIKODE.**

**2. JAMUNA SATHYAPRADEEP, D/O.LATE
MURALLEDHARAN, AGED 35 YEARS,
--DO----. ---DO--.**

**3. JAGATHA RAJENDRAN, D/O.LATE
MURALEEDHARAN, AGED 29 YEARS,
--DO--. --DO--.**

**4. JALAJA, D/O.LATE MURALEEDHARAN, AGED
29 YEARS, --DO--.**

**(RESPONDENTS 2 TO 4 ARE REPRESENTED BY POWER OF ATTORNEY
HOLDER, KRISHNA JANAKI, W/O. MURALEEDHARAN, AGED 67 YEARS,
FLAT-7, CHINDAVALAPPU, RAMMOHAM ROAD, KOZHIKODE).**

BY ADV. SRI.T.K.VIPINDAS, CAVEATOR

**THIS RENT CONTROL REVISION HAVING BEEN FINALLY HEARD ON
13/03/2007, THE COURT ON 22/03/2007 PASSED THE FOLLOWING:**

P.R. Raman & Antony Dominic, JJ.
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R.C.R.No.81 of 2007
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Dated this the 22nd day of March, 2007.

ORDER

Antony Dominic,J.

Tenant in R.C.P.No.42 of 2001 on the file of the Rent Control Court, Payyannur is the revision petitioner. Respondents filed the Rent Control Petition, urging the ground of cessation of occupation as provided under Section 11(4)(v) of the Kerala Buildings (Lease and Rent Control) Act, 1965. The case was posted in the list for trial on 6.1.2003. On account of the absence of the respondent - tenant he was declared ex parte and ultimately, order of eviction was granted. Subsequently, I.A.Nos. 541 and 542 of 2003 were filed seeking condonation of delay and setting aside the ex parte order of eviction respectively. The I.As. were filed through a power of attorney holder and after recording evidence, the Rent Control Court by its order dated 31st July, 2003, passed a common order dismissing both the I.As. The order passed by the Rent Control Court was confirmed by the Rent Control Appellate Authority, Thalassery in R.C.A.No.151 of 2003. It is

aggrieved by the aforesaid orders that the tenant has filed this revision petition.

2. It is the submission of the learned counsel for the revision petitioner that since the revision petitioner was temporarily outside India, as he could not attend the court, he had appointed a power attorney holder for getting the case restored on file and that the court below for extraneous reasons, dismissed the applications. According to the counsel, the court below ought to have allowed the tenant to contest the petition on merits. According to the counsel for the landlords, the attempt of the tenant is only to protract the proceedings, despite the fact that this in fact is a case of cessation of occupation and that this was reported by the commissioner appointed by the court.

3. We have heard counsel on both sides and have considered the submissions made by either side.

4. It is an admitted fact that even at the time of applying for setting aside the ex parte order and for condonation of delay, the tenant was not available in the country. It was through PW1, his power of attorney holder that the applications were made and evidence was adduced by the power of attorney holder. Although the tenant was entitled to appoint a power of attorney to contest the matter, the Rent

Control Court has found that PW1 was not competent to depose anything about the case, nor was he aware of the affairs of the case till the date of his evidence. He had knowledge about the matter and had in fact he went to the extent of saying that he had no instructions even to conduct the case even if the ex parte order is set aside. It is on the overall appreciation of the evidence available before court, the Rent Control Court has concluded that the evidence adduced was unacceptable and that sufficient grounds were not made out for the non-appearance of the tenant on the date of trial.

5. It was in such circumstances that the court below refused to condone the delay and set aside the ex parte order. The Rent Control Appellate Authority has given cogent reasons for dismissing the appeal filed by the tenant. It has been rightly stated in the appellate order that PW1 had no knowledge when the tenant, who is none other than his brother-in-law, went abroad and that he had pleaded ignorance of the circumstances in which the tenant could not come back and appear before court. In the circumstances, we do not find any reason to take a view different from the view taken by the Rent Control Court or the Rent Control Appellate Authority exercising our power of revision.

5. At the time of hearing counsel for the petitioner, in order to

impress upon us his contention that the absence of the tenant from India was only temporary, made available a copy of the passport held by the tenant. We have gone through the document made available to us and in our view, this document only supports the case of the landlords rather than that of the tenant. The document opens with a declaration made by the tenant himself that he is working in Dubai and the declaration is seen to have been made on 6.3.2007. Photocopy of the passport itself is attested by Mr. Tika Ram, Vice Consul, Consulate General of India, Dubai (U.A.E.) on 7.3.2007. From the photocopy of the passport, we also note that he has been a frequent traveller to abroad and the endorsements in the passport lead to such conclusion. We also note that he was previously having passport No.A-717308 issued at Dubai on 18.8.1985, which also indicates that the passport obtained from India expired while he was residing abroad and it was thereupon that he had obtained a passport from Dubai. We also note that he had passport No.V 0227075 issued on 14.8.1995 again from Dubai, U.A.E. Subsequent renewal of passport made on 26.7.2005 is also from Dubai. All this only leads us to the inference, though unnecessary for the purpose of this case, that the tenant was always abroad and that the case set up by the landlords seems to be factually well-founded.

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We do not find any merit in the revision petition and the same will stand dismissed.

P.R.Raman,
Judge.

Antony Dominic,
Judge.

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